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Attorneys for Plaintiffs

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**IN RE:**

STEPHEN C. JENKINS,  
*aka* Steve Jenkins,  
*fdba* Steve Jenkins Construction Co.,  
*fdba* 3 Point Construction LLC  
*fdba* Steve Jenkins Remodeling,

**DEBTOR.**

Case No. 17-42482-rfn-7

JAMES DARE AND MARY N. DARE,

**PLAINTIFFS,**

Adversary No. 18-04066-rfn

V.

STEPHEN C. JENKINS

**DEFENDANT.**

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COME NOW James Dare and Mary N. Dare, Plaintiffs in this case, and respectfully submit this Motion for Summary Judgment.

**1.00 INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED**

1.01 Plaintiffs filed this adversary action seeking a judgment of non-dischargeability of their judgment claims against the Defendant/Debtor. The Dare family is entitled to a judgment as a matter of law, because there are no issues of material facts for the fact-finder to resolve at trial.

1.02 Plaintiffs are entitled to judgment on the grounds of collateral estoppel based upon a judgment obtained by Plaintiffs in State District Court (Tarrant County).

**2.00 STATEMENT OF UNDISPUTED MATERIAL FACTS**

2.01 The Dare family obtained a default judgment against Stephen Jenkins in State District Court (Tarrant County). The Order was signed on December 16, 2016. (*Ex. 1.*)

2.02 The Judgment was a Default Judgment, was supported by evidence considered by the trial judge. (*Ex. 1.*)

2.03 The State Court lawsuit was based upon fraud. (*Ex. 2.*)

2.04 Debtor advertised a house for sale which he claimed contained an aerobic treatment on-site sewer facility. (*Ex. 2* at ¶ 5.0).

2.05 Debtor represented and advertised that the aerobic treatment facility was approximately eight (8) years old and listed a “plumbing and septic” installer who allegedly placed the system. (*Ex. 2* at ¶ 5.0).

2.06 The Dare family’s Original Petition pleaded causes of action of actual fraud, misrepresentation, non-disclosure and false promises. (*Ex. 2* at ¶¶ 6.01-6.04).

2.07 The Defendant intended that his fraudulent misrepresentations induced the Dare family into purchasing the house. (*Ex. 2* at ¶¶ 6.01-6.04).

2.08 In purchasing the home, the Dare family relied upon the representations and misrepresentations made by Debtor Jenkins, when he provided written details about the alleged aerobic facility and the alleged installer. (*Ex. 2* at ¶¶ 6.01-6.04).

2.09 The fraudulent conduct was a proximate cause and producing cause of the Dare family's damages in the amount of \$17,486.72. (*Ex. 1, Ex. 2* at ¶ 7.0).

2.10 The Court has jurisdiction to determine dischargeability of a debt pursuant to 28 U.S.C. §§ 157b(2)(I) and 28 USC 1334 and 11 USC § 523 and 11 USC § 105.

2.11 Venue is proper in this Court pursuant to 28 USC § 1409 (a).

### **3.00 SUMMARY JUDGMENT EVIDENCE**

The following evidence is contained in an appendix, and is incorporated herein as if fully set forth at length:

*Ex. 1:* Final Judgment for Plaintiffs, dated December 16, 2016; (Cause No. 153-286874-16);

*Ex. 2:* Original Petition filed in the 153<sup>rd</sup> District Court, Tarrant County, Texas (Cause No. 153-286874-16).

### **4.00 BRIEFS INCORPORATED**

The arguments made contained in a separate Brief in Support of Motion for Summary Judgment are incorporated herein by reference.

### **5.00 CONCLUSION**

Plaintiffs are entitled to final summary judgment for the reasons set out in this Motion. The Defendant's fraudulent acts resulted in a judgment which is non-dischargeable.

**6.00 RELIEF REQUESTED**

Plaintiffs respectfully request an Order of this Court granting summary judgment of non-dischargeability. Plaintiffs also seek such other and further relief to which they may be justly entitled.

Respectfully submitted,

SOMMERMAN, MCCAFFITY &  
QUESADA, L.L.P.

*/s/ Sean J. McCaffity*

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify by my signature above that a true and correct copy of the foregoing instrument has this date been sent to all attorneys of record in the above-styled and numbered matter, said service being effected in the following manner:

Certified Mail/Return Receipt Requested \_\_\_\_\_

Hand Delivery \_\_\_\_\_

Facsimile \_\_\_\_\_

Electronic Mail \_\_\_\_\_

Electronic Filing \_\_\_\_\_ X \_\_\_\_\_

DATED: May 18, 2018